

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

**BBC CHARTERING
& LOGISTIC GmbH & Co. K.G.**

Plaintiff

VERSUS

ROTEC INDUSTRIES INC.

Defendant

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CIVIL ACTION NO.:

SECTION:

FILED: APRIL 22, 2008
08CV2279 TG

JUDGE:

JUDGE ZAGEL

MAGISTRATE:

MAGISTRATE JUDGE NOLAN

Admiralty 9(h)

COMPLAINT

Plaintiff, BBC Chartering & Logistic GmbH & Co. K.G. (“BBC”) respectfully represents
as follows:

I.

Although there is jurisdiction for this claim under 28 U.S.C. § 1332 as the parties are completely diverse and the matter in controversy exceeds \$75,000.00, this is an admiralty and maritime claim within the jurisdiction of the United States and this Court under 28 U.S.C. § 1333 and within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

II.

Plaintiff, BBC, is a foreign corporation organized and existing under the laws of a state other than the State of Illinois, with its principal offices in Leer, Germany, and who was and is engaged in the business of operating vessels for the carriage of goods by sea.

III.

Defendant Rotec Industries Inc. ("Rotec"), is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 333 W. Lake Street, Elmhurst, Illinois.

IV.

Accordingly, venue and jurisdiction are proper.

V.

On September 15, 2007, Rotec entered into a maritime booking note between Clipper Elite Carriers (Americas) Inc. ("Clipper") and Arabia Project Chartering FZCO ("APC") for the ocean carriage of one "KD tower crane, about 2.763,8484 cubm" from Mumbai, India, to Palua, Venezuela. The terms of the booking note are incorporated herein as if plead *in extenso* and the booking note is attached as "Exhibit A".

VI.

Per the terms of the booking note, Clipper and APC were acting as agents for the vessel's owners and the ultimate carrier, BBC.

VII.

Under the terms of the booking note, time for shipment and loading of the cargo was to take place during October 1-18, 2007, at the port of loading, Mumbai, India.

VIII.

The back of the booking note's terms and conditions explicitly provides for demurrage and deadfreight, stating that "the Merchant (Rotec) shall be liable to the Carrier (BBC) for dead freight and/or any overtime charges, losses, costs, and expenses incurred by the Carrier..." *(parenthetical text added)*.

IX.

The business of ocean carriage requires extensive logistical planning and a significant commitment of resources on the part of a carrier, such as BBC, prior to an actual shipment taking place. As the dates drew near for the loading of Rotec's cargo, BBC set its wheels in motion to undertake its contractual obligations to carry Rotec's cargo by nominating the position of one of its vessels, the M/V BBC ASIA, a multipurpose cargo vessel. BBC further advised Rotec that the vessel's arrival in Mumbai was estimated on October 7, 2007 and that the vessel was proceeding accordingly.

X.

As the vessel made its way to Mumbai, on or around October 3, 2007, Rotec sent an email correspondence to APC advising that the booked cargo would not be made ready for the BBC ASIA's arrival. Rotec requested that BBC review its schedules to accommodate problems with the rotation of the nominated berths and other delays caused by Rotec, through no fault of BBC or any of its agents.

XI.

Rotec later advised on October 4, 2007, that it faced unavoidable delays with local Indian officials and that it "could not be sure when the cargo will be released". Apparently Rotec failed to obtain authority/clearance from Indian customs to release the shipment of cargo and on

October 5, 2007, Rotec advised that it had made a unilateral decision not to ship cargo on board the BBC ASIA because it was unable to confirm when its customs problems would be cleared.

XII.

Rotec's unilateral cancellation and breach of the maritime booking note contract has caused BBC financial hardship, entitling it to contractual and extra-contractual damages. On October 10, 2007, BBC invoiced Rotec for BBC's cancellation damages including deadfreight, which totaled approximately \$497,520.00, less stevedoring services and address commission. These damages were suffered as a result of Rotec's breach of a maritime contract, as well as damages it incurred in having one of its vessels lose precious time and potential bookings of other cargo.

XIII.

Further to the terms and conditions of the booking note and fixture recaps between agents for BBC and Rotec, Rotec is liable to BBC for cancellation damages including deadfreight, totaling approximately \$497,520.00, as well as attorneys' fees, costs, expenses and other damages to be fully proven at trial, all arising from Rotec's breach of contract.

XIV.

BBC has made amicable demand to no avail.

WHEREFORE, plaintiff, BBC Chartering & Logistic GmbH & Co. K.G., prays that defendant, Rotec Industries Inc., appear and answer this Complaint, and after final hearing of this matter, that plaintiff has judgment granted in its favor for all damages resulting from the defendant's breach of maritime contract, including an award for attorneys' fees, pre-judgment and post judgment interest as allowed by law, cost of suit and all other relief, both special and general, at law and in equity, to which the plaintiff may be justly entitled.

Respectfully submitted,

/s/ Stephen J. Moore

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